

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JABLONSKI ENTERPRISES, LTD.,

Plaintiff,

vs.

NYE COUNTY, *et al.*,

Defendants.

Case No. 2:15-cv-02296-GMN-GWF

REPORT & RECOMMENDATION

This matter is before the Court on Defendants Greg Ekins and G.I.S. Land Services' Renewed Motion for Attorney's Fees (ECF No. 110), filed on September 18, 2017. Plaintiff filed its Response (ECF No. 112) on October 2, 2017. Defendants filed their second supplement (ECF No. 114) on October 16, 2017.

Defendants filed their Motion for Attorney's Fees (ECF No. 73) on February 21, 2017. Plaintiff filed its omnibus Response (ECF No. 88) on March 10, 2017. Defendants filed their Reply (ECF No. 92) on March 17, 2017. On July 27, 2017, the Court instructed the parties to file supplements to their motions attaching any state court award of attorney's fees and costs. *See* ECF No. 96. Defendants filed their Supplement (ECF No. 97) and Plaintiff filed its Supplement (ECF No. 98) on July 28, 2017. The Court denied Plaintiff's motion (ECF No. 73) without prejudice on August 28, 2017 and permitted Defendants to refile their motion for attorney's fees and costs to comply with LR 54-14.

BACKGROUND

This case arises from the disputed ownership of a parcel of real property in Nye County, Nevada, known as parcel number APN-106-06. Plaintiff alleges he was the titled legal owner of the

1 property and that Defendants conspired to transfer the title of the property without consulting
2 Plaintiff. *See* ECF No. 1. Plaintiff filed his Complaint (ECF No. 1) on December 4, 2015, and
3 subsequently filed an identical Complaint in the Fifth Judicial District Court, Nye County, Nevada,
4 alleging the following: (1) violation of civil rights; (2) forgery of conveyance; (3) uttering a forged
5 instrument; (4) conversion; (5) civil conspiracy; (6) civil racketeering; and (7) respondeat superior.
6 Defendants filed their special Motion to Dismiss pursuant to Nevada's anti-Strategic Lawsuits
7 Against Public Participation ("SLAPP") statute, NRS § 41.650, *et seq.* ECF No. 11.

8 In May 2016, the Fifth Judicial District Court dismissed Plaintiff's claims with prejudice. On
9 October 6, 2016, Defendants filed Supplements to their Motion to Dismiss (ECF Nos. 62) attaching
10 the state court order dismissing Plaintiff's claims with prejudice and requested that the Court grant
11 dismissal. *See* ECF Nos. 60, 61. On February 7, 2017, the Court granted Defendants' special Motion
12 to Dismiss, entered judgment, and dismissed Plaintiff's claims with prejudice as being barred by the
13 doctrine of res judicata. ECF Nos. 67, 68. On September 25, 2017, the Court granted Plaintiff's
14 Motion to Reconsider (ECF No. 76) its order granting Defendants' motions to dismiss, but,
15 nonetheless, adhered to its ruling that Plaintiff's complaint is dismissed with prejudice under the
16 doctrine of claim preclusion. ECF No. 111. On October 13, 2017, the Court of Appeals of the State
17 of Nevada affirmed the Fifth Judicial District Court's order granting special motions to dismiss. ECF
18 No. 114.

19 Defendants argue that Fed. R. Civ. P. 54 authorizes the prevailing party to recover costs and
20 that NRS 41.670(1) authorizes the Court to enter an award reasonable attorney's fees and costs upon
21 the grant of a special motion to dismiss. *See Renewed Motion for Attorney's Fees* (ECF No. 110), pg.
22 2. Defendants further argue that the defense in this matter is distinct and different from services
23 provided in the related state court proceedings. Plaintiff argues that Defendant's fee request is
24 excessive and that Defendants fail to explain the fee request increase from \$11,625.00 in their first
25 application for fees to \$13,350.00.

26 **DISCUSSION**

27 In an action involving state law claims, district courts apply the law of the forum state to
28 determine whether a party is entitled to attorneys' fees, unless it conflicts with a valid federal statute

1 or procedural rule. *Jiangmen Kinwai Furniture Decoration Co. Ltd v. Int'l Mkt. Centers, Inc.*, 2016
2 WL 6637699, at *2 (D. Nev. Nov. 8, 2016) (citing *MRO Commc'ns, Inc. v. Am. Tel. & Tel. Co.*, 197
3 F.3d 1276, 1282 (9th Cir. 1999)). Under Nevada law, attorney's fees are available only when
4 "authorized by rule, statute, or contract." *Flamingo Realty, Inc. v. Midwest Dev., Inc.*, 879 P.2d 69,
5 73 (Nev. 1994); Nev. Rev. Stat. § 18.010.

6 N.R.S. § 41.670 states as follows:

7 If the court grants a special motion to dismiss filed pursuant to NRS 41.660:
8 (a) The court shall award reasonable costs and attorney's fees to the person against
whom the action was brought. . .

9 Nev. Rev. Stat. Ann. § 41.670(1)(a).

10 In *Rebel Communications, LLC v. Virgin Valley Water Dist.*, No. 2:10-CV-0513-LRH-GWF,
11 2012 WL 5839048, (D. Nev. Nov. 16, 2012), the Court granted the defendant's renewed special
12 motion to dismiss and found that the defendants were entitled to reasonable attorney's fees under
13 Nevada's Anti-SLAPP statute. The Court, however, found that in the circumstances of the case, the
14 scope of work for an award of attorneys' fees should be specifically limited to work respecting the
15 renewed special motion to dismiss and related discovery. *Id.* at *1. The Court found that the
16 defendant's first special motion to dismiss was not granted within the meaning of Nevada's Anti-
17 SLAPP statute because it was granted on other grounds. *Id.*

18 On February 6, 2017, the Court granted Defendants' Motions to Dismiss, found that
19 Plaintiff's claims were barred by the doctrines of res judicata and claim preclusion, and dismissed
20 Plaintiff's complaint with prejudice. *See* ECF No. 67. The claims in the state action are all derived
21 from the same set of facts, the same documents, and the same state proceedings as the instant action.
22 *Id.* at pg. 5. On September 25, 2017, the Court granted Plaintiff's Motion to Reconsider (ECF No.
23 76) its order granting Defendants' motions to dismiss, but, nonetheless, adhered to its ruling that
24 Plaintiff's complaint is dismissed with prejudice under the doctrine of claim preclusion. ECF No.
25 111. Because the Court found that the final judgment in the state action was a valid decision on the
26 merits, Defendant's special motions to dismiss were granted within the meaning of Nevada's Anti-
27 SLAPP statute. The Court, therefore, finds that Defendants are entitled to reasonable attorney's fees
28 pursuant to N.R.S. § 41.670(1).

1 An award of attorney's fees should, however, be limited to work performed regarding the
2 issues of res judicata and claim preclusion as well as issues related to federal law. Further,
3 Defendants are requesting an award of attorney's fees in the related state court matter for performing
4 work drafting documents that are the same or substantially similar to the filings in this matter.
5 Plaintiff argues that Defendants did not provide billing detail in their state court fee request. The
6 Court compared Defendant's billing records in the state court proceedings contained in its supplement
7 with its billing records in this matter. *See* ECF No. 97, pg. 47. An award of attorney's fees in both
8 actions for work that is the same or substantially similar is excessive and would amount to double
9 recovery. The Court will, therefore, reduce Defendants' award of attorney's fees to a reasonable
10 amount of hours of work performed.

11 The Supreme Court has held that reasonable attorney fees must "be calculated according to
12 the prevailing market rates in the relevant community," considering the fees charged by "lawyers of
13 reasonably comparable skill, experience, and reputation." *Blum v. Stenson*, 465 U.S. 886, 895-96 n.
14 11, 104 S.Ct. 1541 (1984). Courts typically use a two-step process when determining fee awards.
15 *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000). First, the Court must calculate the
16 lodestar amount "by taking the number of hours reasonably expended on the litigation and
17 multiplying it by a reasonable hourly rate." *Id.* Furthermore, other factors should be taken into
18 consideration such as special skill, experience of counsel, and the results obtained. *Morales v. City of*
19 *San Rafael*, 96 F.3d 359, 364 n. 9 (9th Cir. 1996). "The party seeking an award of fees should submit
20 evidence supporting the hours worked and rates claimed . . . [w]here the documentation of hours is
21 inadequate, the district court may reduce the award accordingly." *Hensley v. Eckerhart*, 461 U.S.
22 424, 433 (1983). Second, the Court "may adjust the lodestar, [only on rare and exceptional
23 occasions], upward or downward using a multiplier based on factors not subsumed in the initial
24 calculation of the lodestar." *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir.
25 2000).

26 In this matter, Defendants request \$13,350 in attorney's fees based on 35.6 hours of work
27 performed in preparing briefs, conferring with Defendants, interviewing witnesses, reviewing
28 documents, preparing the application for fees, and reviewing briefs filed by parties to this matter.

1 That amount is based on work performed by Thomas P. Erwin, Esq. at an hourly rate of \$375.00.
2 Plaintiff does not take issue with counsel's hourly rate or qualifications. *See Response* (ECF No.
3 112), pg. 2. After review of Defendants' counsel's affidavits and billing records, the Court finds that
4 35.6 hours of labor should be reduced to 6.1 hours. The awarded hours represent work performed on
5 Defendants' motion to dismiss and related legal research. The Court further reduced the awarded
6 hours to a reasonable amount based upon the similarity and duplication of work performed in the state
7 proceedings. As a result, the Court will award Defendants reasonable attorney's fees in the amount of
8 \$2,287.50. Accordingly,

9 **RECOMMENDATION**

10 **IT IS HEREBY RECOMMENDED** that Greg Ekins and G.I.S. Land Services' Renewed
11 Motion for Attorney's Fees (ECF No. 110) be **granted**, in part, and Plaintiff should pay the total sum
12 of \$2,287.50.

13 **NOTICE**

14 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in
15 writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held
16 that the courts of appeal may determine that an appeal has been waived due to the failure to file
17 objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also
18 held that (1) failure to file objections within the specified time and (2) failure to properly address and
19 brief the objectionable issues waives the right to appeal the District Court's order and/or appeal
20 factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir.
21 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

22 DATED this 25th day of October, 2017.

24 
25 GEORGE FOLEY, JR.
26 United States Magistrate Judge
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